

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN  
APPELLATE DIVISION**

SHARON MANNING,

Appellant,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,

Appellee.

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)D.C. Crim. App. No. 2002-156

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)Re: Terr. Ct. Crim. No. F29/2002

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On Appeal from the Territorial Court of the Virgin Islands

Considered: February 27, 2004

Filed: March 26, 2004

**BEFORE:**    **RAYMOND L. FINCH**, Chief Judge of the District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **PATRICIA D. STEELE**, Judge of the Territorial Court of the Virgin Islands, Division of St. Croix, Sitting by Designation.

**ATTORNEYS:**

**Debra S. Watlington, Esq.**

St. Thomas, U.S.V.I.

*Attorney for Appellant,*

**Joel H. Feld, Esq.**

Assistant Attorney General

V.I. Department of Justice

St. Thomas, U.S.V.I.

*Attorney for Appellee.*

**MEMORANDUM**

**PER CURIAM.**

**I. INTRODUCTION**

Appellant has timely appealed her conviction for assault in the third degree pursuant to V.I. Code Ann. tit. 14, § 297(2) arguing that she was denied the right to a fair trial because the prosecutor made several improper statements regarding her alleged drug use. After due consideration, we find that prosecutor's statements did not deprive the appellant of her right to a fair trial. Accordingly, this Court affirms Manning's conviction.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

In January 2002, the appellant, Sharon Manning, was residing at Building No. 17, Apartment 100, Oswald Harris Court Housing Community, St. Thomas, U.S. Virgin Islands. Marilyn Creque was also living in the same apartment. Manning and Creque had an ongoing dispute over the locking of the front door. On January 16, 2002, the two women had an altercation regarding the door during which Creque was stabbed. (App. 35-40.) Manning was arrested that same day.

On January 23, 2002, the Government filed an information charging Manning with: assault in the first degree in violation of 14 V.I.C. § 295(1) in Count I, assault in the third degree in violation of 14 V.I.C. § 297(2) in Count II, and carrying or

using a dangerous weapon in violation of 14 V.I.C. § 2251(a)(2)(A)(B). After Manning pled not guilty at arraignment, a jury trial was held on January 22 and 23, 2002.

During opening statement, the prosecutor said "the defendant hallucinates from time to time because she's on drugs. . . ." (App. at 23.) At this time, the trial court sustained defense counsel's objection. (*Id.*) Later in the opening, the prosecutor conceded that the alleged victim, Creque, had used drugs herself. (App. at 26.)

In the government's case, Creque took the stand. Creque testified that the appellant stabbed her during their altercation. (App. at 35.) On cross-examination, Creque admitted to be recovering from a cocaine addiction. (App. at 46.)

The officer responding to the disturbance also testified for the government. The officer testified on direct examination that when she encountered Manning, she was crying and saying "look what she made me do. I didn't mean to stab her. I didn't mean to do it." (App. at 52.) The officer also testified that Creque told another police officer that Manning had stabbed her. The prosecutor also elicited testimony that the officer "observed [Manning] acting like somebody who is on drugs." (App. at 56.) Defense counsel objected, and the trial court sustained the

objection and told the jury to disregard the statement. (*Id.*) In response to the prosecutor's next question, the officer testified "I run into crackheads everyday." (App. at 57.) Again, the court sustained defense counsel's objection. (*Id.*) Upon defense counsel's request, the court told the jury to disregard that statement as well. (*Id.*) At sidebar, the prosecutor argued that she should be able to put forth evidence that a narcotic base pipe was "picked up from the defendant." (App. at 58.) The trial judge excluded the evidence ruling it not relevant to the crime charged. (*Id.*)

After the government rested, the appellant took the stand in her own defense. Despite the trial court's prior rulings, the prosecutor's first question was about drug use: "Ms. Manning, is it true that you use crack from time to time?" (App. at 96.) Defense counsel objected and the court sustained.

At the close of all the evidence, defense counsel moved for a mistrial, but after hearing argument the trial court denied this motion. The trial court then gave the jury the following curative instructions:

Questions and objections by lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been. The questions asked by a lawyer for either party

in this case are not evidence. If a lawyer asks a question of a witness which contains an assertion of fact, you therefore may not consider the assertion by the lawyer as any evidence of that fact. Only the answers are evidence.

Anything that I have excluded from evidence or ordered stricken and instructed you to disregard is not evidence. You must not consider such items. . . .

. . . .

During the course of this trial, you may have heard references to the possibility of drug use by the defendant. You should completely disregard all such references and not consider them during deliberations. The Defendant is not being charged with and may not be convicted for any offenses other than those charged in the information.

(App. at 125, 132.)

After deliberation, the jury found the appellant guilty of Count II for assault in the third degree, but not guilty on Counts I and III. (App. at 13.) The appellant timely filed her pro se appeal.

### **III. DISCUSSION**

#### **A. Jurisdiction and Standards of Review**

This Court has jurisdiction to review final judgments and orders of the Territorial Court in criminal cases. See 4 V.I.C. § 33; Section 23A of the Revised Organic Act.<sup>1</sup> The appellate court accords plenary review to the trial court's interpretation

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<sup>1</sup> Revised Organic Act of 1954, § 23A, 48 U.S.C. § 1614, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 159-60 (1995) (preceding V.I. CODE ANN. tit. 1).

of legal precepts; however, factual findings are reviewed for clear error. *Id.*; See *Poleon v. Government of the V.I.*, 184 F. Supp. 2d 428 (D.V.I. App. Div. 2002). We exercise plenary review over claims of constitutional gravity. *Maddox v. Government of the Virgin Islands*, 121 F.Supp.2d 457, 459 (D.V.I. 2000) (citing *Nibbs v. Roberts*, 31 V.I. 196, 204, 1995 WL 78295 (D.V.I.1995)).

**B. Appellant was not Deprived of her Right to a Fair Trial**

The conviction must be reversed if the "the prosecutor's remarks, taken in the context of the trial as a whole, were sufficiently prejudicial to have deprived [the appellant of his] right to a fair trial." *United States v. Retos*, 25 F.3d 1220, 1224 (3d Cir.1994) (quoting *United States v. DiPasquale*, 740 F.2d 1282, 1297 (3d Cir.1984)). If this Court determines upon review of the record, however, that even without the improper prosecutorial statements the jury still would have convicted the appellant, then no actual prejudice occurred. See *Gov't of the Virgin Islands v. Joseph*, 770 F.2d 343, 350 (3d Cir. 1985); See *Gallagher*, 576 F.2d 1028, 1042 (3d Cir. 1978) (finding that prejudice can be cured by either strong evidence of guilt or curative instructions). We find that the appellant was not deprived of her right to a fair trial. Upon reviewing the record, we find overwhelming evidence to support the conviction, not the least of which are the testimony of the police officer

and the victim. Even without the prosecutor's comments at trial, we believe the jury would have convicted this appellant. Furthermore, the trial court gave the appropriate curative instructions to address the prosecutor's comments.

#### **IV. CONCLUSION**

We affirm the conviction because the prosecutor's improper statements, taken in the context of the evidence and the curative instructions, did not deprive the appellant of her right to a fair trial.

**ENTERED this 26th day of March, 2004.**

**ATTEST:**  
**WILFREDO F. MORALES**  
Clerk fo the Court

By: \_\_\_\_\_  
Deputy Clerk

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Assistant Attorney General

V.I. Department of Justice

St. Thomas, U.S.V.I.

*Attorney for Appellee.*

**ORDER**



**PER CURIAM.**

For the reasons given in the accompanying memorandum of even date, it is hereby **ORDERED** that Manning's conviction of assault in the third degree, 14 V.I.C. § 297(2), is **AFFIRMED**.

**ENTERED this 26th day of March, 2004.**

**ATTEST:**  
**WILFREDO F. MORALES**  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

**Copies to:**  
Judges of the Appellate Panel  
Judges of the Territorial Court  
Hon. Geoffrey W. Barnard  
Hon. Jeffrey L. Resnick  
Debra S. Watlington, Esq.  
Joel H. Feld, Esq.  
Mrs. Francis  
Mrs. Bonelli  
St. Thomas law clerks  
St. Croix law clerks

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**ENTERED this 26th day of March, 2004.**

**FOR THE COURT:**

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**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

**\*\*\*\*\*SEALED ORDER - FILE COPY ONLY \*\*\*\*\***